

9 FAM 40.32 NOTES

(TL:VISA-313; 08-27-2001)

9 FAM 40.32 N1 Scope of INA 212(a)(3)(B)

9 FAM 40.32 N1.1 Background and Summary

(TL:VISA-177; 04-30-1998)

The Immigration Act of 1990, Pub. L. 101-649, created INA 212(a)(3)(B) which supplants former INA 212(a)(28)(F) and incorporates aspects of former INA 212(a)(27) and (29). INA 212(a)(3)(B) excludes any alien who has engaged, or who is likely to engage after entry, in a terrorist activity as defined therein. [See 9 FAM 40.32 N2.]

9 FAM 40.32 N1.2 Adjudicating Ineligibility Under INA 212(a)(3)(B)

(TL:VISA-105; 02-03-1995)

Consular officers must consider the following when adjudicating cases falling within the purview of INA 212(a)(3)(B):

(1) All visa applications involving possible ineligibility under INA 212(a)(3)(B) must be submitted for the Department's security advisory opinion [see 9 FAM 40.32 N3];

(2) Past as well as prospective acts of terrorism render an alien ineligible [see 9 FAM 40.32 N4];

(3) Participating in the planning or preparation of terrorist activity is an exclusionary act [see 9 FAM 40.32 N5];

(4) Mere membership in an international terrorist group designated by the Secretary of State may constitute a grounds of ineligibility, as can serving as a representative of such a group [see 9 FAM 40.32 N6];

(5) Advocacy of terrorism is not always exclusionary [see 9 FAM 40.32 N6.6];

(6) INA 212(a)(3)(B)(i) specifies that aliens who are officers, officials, representatives, or spokesmen of the Palestine Liberation Organization are considered to be engaged in a terrorist activity [see 9 FAM 40.32 N8];

(7) When ineligibility under INA 212(a)(3)(B) is established, the Department will determine whether an INA 212(d)(3)(A) waiver is appropriate and, if so, will request the waiver from INS [see 9 FAM 40.32 N9];

(8) The Secretary of State must report all visa denials under INA 212(a)(3)(B) to the appropriate committees of Congress [see 9 FAM 40.32 N10];

(9) Consular officers are responsible for reporting information on possible terrorists who are not current visa applicants to the Department, utilizing the "VISAS VIPER" procedure [see 9 FAM 40.32 N11]; and,

(10) A new nonimmigrant visa classification has been created for applicants who possess critical information relating to terrorist and criminal activities [see 9 FAM 40.32 N12].

9 FAM 40.32 N2 Definitions

(TL:VISA-77; 03-30-1993)

Specific definitions of "terrorist activity" and "engage in terrorist activity" are incorporated into the language of INA 212(a)(3)(B). The actions falling within these definitions are summarized below.

9 FAM 40.32 N2.1 "Terrorist Activity"

(TL:VISA-77; 03-30-1993)

"Terrorist activity" means any of the following acts, if illegal were committed, or which would be unlawful if committed in the United States:

(1) The hijacking or sabotage of any conveyance (regardless of type);

(2) The seizing or detaining, and the threat to kill, injure, or continue to detain any person in order to compel an action by a third party as a condition for releasing the detained individual;

(3) A violent attack upon an internationally protected person or upon his or her liberty;

(4) An assassination;

(5) The use of any biological or chemical agent, nuclear weapon or device, or explosive or firearm (other than for mere personal monetary gain) to endanger the safety of another individual or to cause substantial property damage; or,

(6) A threat, attempt, or conspiracy to commit any of the above actions.

9 FAM 40.32 N2.2 "Engage in Terrorist Activity"

(TL:VISA-103; 12-19-1994)

The term "engage in terrorist activity" means committing, as an individual or as a member of a group, an act of terrorism described in 9 FAM 40.32 N2.1, or an act which the person knows, or should know, provides material support to any individual, organization, or government in conducting a terrorist action. Such acts include the:

- (1) Preparation or planning of a terrorist activity;
- (2) Gathering of information on potential targets for terrorist activity;
- (3) Providing any type of material support to any individual or entity which the alien knows, or has reason to believe has committed, or plans to commit a terrorist act;
- (4) Soliciting of funds or other things of value for terrorist activity or for any terrorist organization; and,
- (5) Solicitation of any individual to engage in terrorist activity, or for membership in any terrorist organization or government.

9 FAM 40.32 N3 Security Advisory Opinion Mandatory

(TL:VISA-103; 12-19-1994)

The Department's security advisory opinion, requested by means of a "VISAS DONKEY" telegram, is required for any visa application involving possible ineligibility under INA 212(a)(3)(B) to ensure consistency and uniformity of interpretation and to allow input from other interested U.S. Government agencies. [For procedural guidance, see 9 FAM 40.32 PN1.]

9 FAM 40.32 N4 Past and Prospective Terrorist Activity Exclusionary

(TL:VISA-103; 12-19-1994)

a. Applicants who have previously engaged in terrorist activities, as well as those who are likely to engage in such activities after entry, fall within the purview of INA 212(a)(3)(B). Consequently, a security advisory opinion must be submitted on any visa applicant who has been denied a visa in the past, or has a criminal record for activities relating to terrorism, or who the consular officer has reason to believe has engaged or will engage in terrorist activities.

b. Sources of evidence indicating that an applicant may be ineligible under INA 212(a)(3)(B) include the completed visa application, the applicant's statements, the results of name checks and advisory opinion requests (when required), checks of CLASS and post files, and any available outside information.

9 FAM 40.32 N5 Preparing or Planning Terrorist Activity Renders Alien Ineligible

(TL:VISA-103; 12-19-1994)

As indicated in 9 FAM 40.32 N2.2, the preparation or planning of a terrorist act is specifically defined in INA 212(a)(3)(B)(iii) as "engaging in terrorist activity." In interpreting this clause, the Department is of the opinion that an applicant, who holds a leadership position in an organization which purposefully engages in terrorism, may be found excludable solely by virtue of his or her decision-making role within that organization, even without direct evidence of the applicant's active involvement in the planning or preparation of a specific terrorist act. It is the Department's belief that an individual who participates in determining the policy and goals of an organization is, by definition, responsible for the actions resulting from those policies and goals. When submitting such cases for the Department's mandatory security advisory opinion, consular officers should devote particular attention to reporting the level and nature of the applicant's position within the hierarchy of the organization.

9 FAM 40.32 N6 Membership In, or Serving as a Representative of, Certain Terrorist Groups is Exclusionary

9 FAM 40.32 N6.1 Designating Foreign Terrorist Organizations

(TL:VISA-313; 08-27-2001)

Under INA 219, the Secretary is authorized to designate an organization as a terrorist organization if:

- (1) The organization is a foreign organization;*
- (2) The organization engages in terrorist activity (as defined in INA 212(a)(3)(B); and*
- (3) The terrorist activity of the organization threatens the security of U.S. nationals or the national security of the United States.*

9 FAM 40.32 N6.2 Mere Membership Not Exclusionary

(TL:VISA-182; 12-04-1998)

Members or representatives of a foreign terrorist group which the Secretary of State has designated under INA 219, and who knew or should have known that the group is a terrorist organization, are excludable under INA 212(a)(3)(B)(i)(V), even if they have not performed any terrorist acts.

9 FAM 40.32 N6.3 Representative Defined

(TL:VISA-177; 04-30-1998)

Under subsection (IV) of INA 212(a)(3)(B)(i), any person who is a representative of a foreign terrorist organization, as designated by the Secretary, is ineligible for a visa. A representative is defined in INA 212(a)(3)(B)(iv) as "an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity." Activities normally considered to be free speech in the United States would not be considered "directing, counseling, commanding or inducing" terrorist activity, but such activities which aid and abet the commission of a terrorist act would be exclusionary.

9 FAM 40.32 N6.4 Member Defined

(TL:VISA-177; 04-30-1998)

a. The INA does not define membership. In some cases, membership will be clear because of information that the individual took an oath or performed some act that is a prerequisite of membership. The Department does not consider, however, that compliance with such requirements is necessary to a finding of membership. The Department, instead, believes that membership shall be determined in light of all relevant facts, to include, but not limited to, the following:

- (1) Acknowledgment of membership;
- (2) Frequent association with other members;
- (3) Participation in the organization's activities, even if lawful;
- (4) Actively working to further the organization's aims and methods in a way suggesting close affiliation constituting membership, e.g., proposing legislation;
- (5) Occupying a position of trust in the organization, past or present;
- (6) Receiving financial support from the organization, e.g., scholarships, pensions, salary;

- (7) Contributing money to the organization;
- (8) Determination of membership by a competent court;
- (9) Voluntarily displaying symbols of the organization; or,
- (10) Receiving honors and awards given by the organization.

b. These factors will have to be considered in their entirety, and may or may not be sufficient in isolation to support a finding of membership. For example, while contributing money to an organization does not in itself always indicate membership, it may indicate so in certain situations.

c. The law is written in the present tense, requiring that a person be a member of a terrorist organization at the time of application to be inadmissible. Since only current, not past, membership is a basis for exclusion, these factors will also have to be assessed to determine whether they reasonably indicate that membership is current. Generally, if the consular officer can conclude that the alien was a member in the past, current membership can be inferred unless the visa applicant can establish that he or she is no longer a member. Terrorist organizations vary in their practices. Some allow members to leave the organization, others do not. The organization's practices will, in part, determine if membership, once established, can be terminated. Termination of membership will usually be shown by changes in the person's attitudes, actions, associations, and activities over time. A single event, such as a self-serving resignation, would not usually establish that an applicant's membership has ended. (The Department may in some cases be able to develop information about membership practices of a particular group.)

9 FAM 40.32 N6.5 “Knows” or “Should Have Known” Requirement

(TL:VISA-177; 04-30-1998)

A member or representative of a terrorist organization is inadmissible if he or she knows, or should have known, that the organization is a terrorist organization. There are at least three bases on which this requirement could be met. First, facts particular to the individual, such as his or her residence, profession, or education, may permit a conclusion that the applicant knows, or should have known, that the organization is a terrorist organization. Secondly, the names of the groups have been published in the Federal Register, which is ordinarily considered public notice for U.S. legal purposes, and, may, in fact, come to the applicant's attention. Finally, presentation of the names and aliases of designated foreign terrorist organizations to applicants at post will put them on clear notice that these are terrorist organizations for U.S. immigration purposes.

9 FAM 40.32 N6.6 Membership Equating to Participation in Terrorism

(TL:VISA-177; 04-30-1998)

a. If a terrorist organization is not designated by the Secretary of State under INA 219, membership may still lead to ineligibility. There are certain terrorist organizations that are of such a size and/or character that membership therein reasonably supports a conclusion that the alien has engaged in terrorist activity. A clear example of such an organization is the Action Directe (AD), a French group having only a handful of members, all of who were active participants in the terrorist acts the group committed. It is the Department's opinion that an alien who is a member of a terrorist organization of this type can properly be held to have engaged in terrorist activity within the meaning of INA 212(a)(3)(B), even if there is no direct evidence of his or her participation in a specific act or acts.

b. A determination of whether a particular organization is one of the kind described above can only be made by the Department after consultation with other appropriate U.S. Government agencies. Posts should seek the Department's review of any organization, which they believe may meet the above description. Such requests for review should include a full analysis of the size, structure, and activities of the organization, as well as a clear sense of what is required of its members (e.g., whether an individual must, as a condition to membership, have committed or agreed to commit terrorist activity or to assist in such acts, or to provide material support to those committing such acts). The resources of other elements of the mission's country team should be drawn upon as appropriate in preparing this analysis, and the post's recommendation must be provided.

9 FAM 40.32 N6.7 Advocacy of Terrorism Not Always Exclusionary

(TL:VISA-313; 08-27-2001)

a. Advocacy of terrorism may be exclusionary under two circumstances:

(1) **Incitement**—An alien is excludable under INA 212(a)(3)(B)(i)(III) if he or she has, under circumstances indicated intention to cause death or serious bodily harm, and/or incited terrorist activity etc. Incitement is the making of utterances, written or oral, which are intended to arouse, urge, provoke, stir up, instigate, persuade, or move another person to commit an act of terrorism.

(2) **Representation**—An alien is excludable under INA 212(a)(3)(B)(iv) if he or she directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.

b. Only statements which are intended to directly further or abet a specific act of terrorism are exclusionary. Utterances which are general in nature, however offensive, would not result in a finding of ineligibility under INA 212(a)(3)(B), particularly if they meet the Constitutional provisions for free speech in the United States.

c. The Secretary has designated the following as foreign terrorist organizations for purposes of implementation of INA 212(a)(3)(b)(i)(IV) or (V):

(1) **ABU NIDAL ORGANIZATION**

Also known as: the Ano, Black September, Fatah Revolutionary Council, the Arab Revolutionary Council, the Arab Revolutionary Brigades, or the Revolutionary Organization of Socialist Muslims;

(2) **ABU SAYYAF GROUP**

Also known as: Al Harakat Al Islamiyya;

(3) **AL-QA'IDA**

Also known as: Al-Qaeda, the Base, the Islamic Army, the World Islamic Army, the World Islamic Front for Jihad Against Jews and Crusaders, the Islamic Army for the Liberation of the Holy Places, the Usama Bin Laden Network, the Usama Bin Laden Organization, Islamic Salvation Foundation; or the Preservation of the Holy Sites.

(4) **ARMED ISLAMIC GROUP**

Also known as: Gia, Groupement Islamique Arme, AIG, or Al-Jama'ah Al-Lislamiyah Al-Musallah;

(5) **AUM SHINRIKYO**

Also known as: Aum Supreme Truth, A.I.C. Sogo Kenkyusho, or A.I.C. Comprehensive Research Institute;

(6) **EUZKADITA ASKATASUNA**

Also known as: Basque Fatherland and Liberty, or the ETA;

(7) **GAMA'A AL-ISLAMIYYA**

Also known as: the Islamic Group, IG, Al-Gama'at, Islamic Gama'at, or Egyptian Al-Gama'at Al-Islamiyya;

(8) **HAMAS**

Also known as: the Islamic Resistance Movement, Harakat Al-Muqawama Al-Islamiya, Students of Ayyash, Students of the Engineer, Yahya Ayyash Units, Izz Al-Din Al-Qassim Brigades, Izz Al-Din Al-Quassim Forces, or Izz Al-Din Al-Qassim Battalions;

(9) **HARAKAT UL-ANSAR**

Also known as: HUA, Al-Hadid, Al-Hadith, or Al-Faran;

(10) **HIZBALLAH**

Also known as: Party of God, Islamic Jihad, Islamic Jihad Organization, Revolutionary Justice Organization, Organization of the Oppressed on Earth, Islamic Jihad for the Liberation of Palestine, also known Allah, or Followers of the Prophet Muhammad;

(11) **JAPANESE RED ARMY**

Also known as Nippon Sekigun, Nihon Sekigun, the Anti-Imperialist International Brigade, the Holy War Brigade, the Anti-War Democratic Front, the JRA, the AIIB;

(12) **AL-JIHAD**

Also known as: Egyptian Al-Jihad, Vanguard of Conquest, Vanguard of Victory, Talai'i Al-Fath, Tala'ah Al-Fatah, Tala'al Al-Fateh, Tala'al-Fateh, Talaal Al-Fatah, a Tala'Al-Fateh, New Jihad, Egyptian Islamic Jihad, or Jihad Group;

(13) **KACH**

Also known as: the Repression of Traitors, Dikuy Bogdim, the Committee for the Safety of the Roads, the Sword of David, or Judea Police;

(14) **KAHANE CHAI**

Also known as: Kahane Lives, the Kfar Tapuah Fund, the Judean Voice;

(15) **KURDISTAN WORKERS' PARTY**

Also known as: the PKK, or the Partiya Karkeran Kurdistan;

(16) **LIBERATION TIGERS OF TAMIL EELAM**

Also known as: LTTE, Tamil Tigers, or Ellalan Force;

(17) MUJAHEDIN-E KHALQ ORGANIZATION

Also known as: MEK, MKO, Mujahedin-E Khalq, People's Mujahedin Organization or Iran, PMOI, Organization of the People's Holy Warriors of Iran, or Sazeman-E Mujahedin-e Khalq-E Iran;

(18) NATIONAL LIBERATION ARMY

Also known as: the ELN, or the Ejercito de Liberacion Nacional;

(19) PALESTINE ISLAMIC JIHAD-SHAQAQI FACTION

Also known as: Pij-Shaqaqi Faction, Pij, Islamic Jihad in Palestine, Islamic Jihad of Palestine, or Abu Ghunaym Squad of the Hizballah Bayt Al-Maqdis;

(20) PALESTINE LIBERATION FRONT-ABU ABBAS FACTION

Also known as: the Palestine Liberation Front, the PLF, or the PLF-Abu Abbas;

(21) POPULAR FRONT FOR THE LIBERATION OF PALESTINE

Also known as: the PFLP, the Red Eagles, the Red Eagle Group, the Red Eagle Gang, the Halhul Gang, or the Halhul Squad;

(22) POPULAR FRONT FOR THE LIBERATION OF PALESTINE-GENERAL COMMAND

Also known as: the PFLP-GC;

(23) *REAL IRA*

Also known as: Real Irish Republican Army, RIRA, 32 County Sovereignty Committee, 32 County Sovereignty Movement, Real Oglagh na hEireann, or Irish Republican Prisoners Welfare Association

(24) REVOLUTIONARY ARMED FORCES OF COLOMBIA

Also known as: FARC or Fuerzas Armadas Revolucionarias de Colombia;

(25) REVOLUTIONARY ORGANIZATION 17 NOVEMBER

Also known as: 17 November or Epanastatiki Organosi 17 Noemvri;

(26) REVOLUTIONARY PEOPLE'S LIBERATION PARTY/FRONT

Also known as: Devrimci Halk Kurtulus Partisi-Cephesi, the DHKP/C, Devrimci Sol, Revolutionary Left, Dev Sol, Dev Sol Silahlı Devrimci Birlikleri, Dev Sol SDB, or Dev Sol Armed Revolutionary Units;

(27) REVOLUTIONARY PEOPLE'S STRUGGLE

Also known as: Epanastatikos Laikos Agonas, ELA, Revolutionary Popular Struggle, or Popular Revolutionary Struggle;

(28) SHINING PATH

Also known as (in Spanish): Sendero Luminoso, SL, the Partido Comunista del Peru en el Sendero Luminoso de Jose Carlos Mariategui (Communist Party of Peru on the Shining Path of Jose Carlos Mariategui), Partido Comunista del Peru (Communist Party of Peru), PCP, also known as Socorro Popular del Peru (People's Aid of Peru), SPP, Ejercito Guerrillero Popular (People's Guerrilla Army), EGP, Ejercito Popular de Liberacion (People's Liberation Army), or EPL; and,

(29) TUPAC AMARU REVOLUTIONARY MOVEMENT

Also known as: the Movimiento Revolucionario Tupac Amaru or the MRTA.

9 FAM 40.32 N7 Advocacy of Terrorism Not Generally Exclusionary

(TL:VISA-177; 04-30-1998)

a. Advocating terrorism, through oral or written statements is usually not a sufficient ground for finding an applicant ineligible under INA 212(a)(3)(B). Only statements that directly further or abet the commission of a terrorist act may properly constitute a basis for denying a visa. Words uttered or written which do not meet this test, no matter how offensive they may be, would not result in a finding of ineligibility under INA 212(a)(3)(B). As an example, statements approving a specific terrorist act, and asserting that such acts should be repeated, do not render an applicant ineligible.

b. The type of advocacy which directly furthers and abets the commission of a terrorist act (and which would consequently result in ineligibility) includes, but is not limited to, the following examples:

(1) Statements made during the planning or preparation of a terrorist activity and constituting a part of such planning or preparation;

(2) Specific threats to commit a terrorist act;

(3) Demands made by, or in behalf of, the perpetrators during the course of a hijacking or hostage situation; and,

(4) Orders given by one member of a team of terrorists to his or her accomplices.

9 FAM 40.32 N8 The Palestine Liberation Organization (PLO)

(TL:VISA-177; 04-30-1998)

Neither mere membership in the Palestine Liberation Organization (PLO) nor claims of Palestinian nationality render an applicant ineligible under INA 212(a)(3)(B). Serving as an officer, official, representative, or spokesman of the PLO, however, is specifically defined in INA 212(a)(3)(B)(i)(V) as engaging in terrorist activity, and is a ground for exclusion. The Department interprets INA 212(a)(3)(B)(i)(V) as excluding only those individuals who are currently PLO officers, officials, representatives, or spokesmen. Applicants who no longer occupy such positions are not ineligible under this section. Consular officers should be alert to the possibility, however, that the applicant may be ineligible under INA 212(a)(3)(B) for otherwise having engaged in, or for planning to engage in, terrorist activity.

9 FAM 40.32 N8.1 Security Advisory Opinions for PLO Officials

(TL:VISA-105; 02-03-1995)

a. As with all cases of possible ineligibility under INA 212(a)(3)(B), a security advisory opinion is required for any applicant whom a consular officer believes may be an officer, official, representative, or spokesman of the PLO. Such SAO requests should be directed to CA/VO/L/C and NEA, and should include "KPAL" and "PLO" on the TAGS line of the cable. [For further procedural guidance, see 9 FAM 40.32 PN1.] Consular officers may occasionally be uncertain as to whether an applicant's duties within a PLO member organization [see 9 FAM 40.32 N8.2-2] qualify him or her as an "officer, official, representative, or spokesman." In such cases, the SAO request should contain as much relevant information as possible regarding the nature of the position, including a discussion of the applicant's level of responsibility within the organization, and of any policy-making component of the position.

b. The cases of applicants previously found ineligible under former INA section 212(a)(28)(F) for PLO-related affiliation and/or activities should be resubmitted to the Department for security advisory opinions. The Department has found that while some applicants were denied visas solely because of PLO membership (no longer a ground of ineligibility), others were involved in activities which continue to render them ineligible.

9 FAM 40.32 N8.2 Composition of the Palestine Liberation Organization

9 FAM 40.32 N8.2-1 Administrative Structure of the PLO

(TL:VISA-103; 12-19-1994)

The PLO is an umbrella organization composed of several groups with diverse ideologies that have as their common goal the achievement of a Palestinian state. The PLO's policy is set by its parliament, the Palestine National Council (PNC), which is made up of representatives from the PLO constituent groups as well as of independent members. The principal decision-making body is the 15 member Executive Committee that meets regularly and functions much like a cabinet.

9 FAM 40.32 N8.2-2 PLO Member Organizations

(TL:VISA-105; 02-03-1995)

a. The list that follows includes the groups that are currently considered to belong to the PLO because of their participation in the PNC [see 9 FAM 40.32 N8.2-1] and their general adherence to its policy dictums. It is provided solely to assist consular officers in adjudicating visa eligibility under INA 212(a)(3)(B)(i). As this list is subject to change and is, therefore, not necessarily inclusive, consular officers should resolve any doubts regarding an organization's PLO affiliation by submitting the case to CA/VO/L/A for an advisory opinion.

b. PLO Member Organizations:

- (1) Fatah;
 - (a) Western Sector; and,
 - (b) Force 17;
- (2) Popular Front for the Liberation of Palestine (PFLP);
- (3) Democratic Front for the Liberation of Palestine (DFLP);
 - (a) Hawatmah Faction; and,
 - (b) Abd Rabbu Faction;
- (4) Palestine Liberation Front (PLF);
 - (a) Abu Abbas Faction; and,
 - (b) Tal'at Yaqub Faction;
- (5) Arab Liberation Front (ALF); and,

(6) Palestinian People's Party Popular Struggle Front.

9 FAM 40.32 N8.2-3 Officials of the Palestinian Authority

(TL:VISA-177; 04-30-1998)

The Department has determined that being an official of the Palestinian Interim Self-Governing Authority does not, in itself, make an applicant ineligible under INA 212(a)(3)(B)(i). The PLO and the Palestinian Authority are considered to be distinct entities for visa purposes. An alien who is an officer, official, representative, or spokesman for the PLO continues to be ineligible under INA 212(a)(3)(B). Representatives or mere members of the constituent groups of the PLO which are designated by the Secretary of State under INA 219 are ineligible for visas under INA 212(a)(3)(B)(i)(IV) or (V). Posts should resolve any doubts about ineligibilities under this section with a security advisory opinion directed to CA/VO/L/C.

9 FAM 40.32 N9 INA 212(d)(3)(A) Waivers Must Be Requested by the Department

(TL:VISA-103; 12-19-1994)

Ineligibility under INA 212(a)(3)(B) may be waived pursuant to INA 212(d)(3)(A) for nonimmigrant, but not immigrant, visa applicants. Waivers of INA 212(a)(3)(B) ineligibility may not be requested by posts from INS offices abroad, but rather will be recommended to INS Washington by the Department when deemed appropriate. The consular officer's assessment of whether a waiver should be recommended is carefully considered by the Department and should be provided in all cases. The Department will advise the issuing post when a waiver has been approved, and the post shall annotate the visa in accordance with 9 FAM 40.111 PN3.

9 FAM 40.32 N10 Reports to Congress

(TL:VISA-103; 12-19-1994)

Consular officers should be aware that section 128 of Pub. L. 102-138 of October 28, 1991, added to the law a permanent requirement that the Secretary of State report, on a timely basis, to the Judiciary Committees of the House and Senate, the House Foreign Affairs Committee, and the Senate Foreign Relations Committee every denial of a visa "on grounds of terrorist activity". The Department has interpreted this reporting requirement to apply only when the applicant is applying for an immigrant visa and no waiver of ineligibility is possible, or when the applicant is applying for a nonimmigrant visa and the Department declines to recommend a waiver of ineligibility, or the Department of Justice declines to grant a waiver. The Department has also interpreted the term "on a timely basis" to mean within three months following visa denial. Accordingly, whenever the Department renders an opinion that the applicant is ineligible to receive a visa under INA

212(a)(3)(B), and a waiver will not be granted to permit the applicant's entry, the consular officer will be required to report promptly to the Department the precise date on which the applicant's application was denied. [See 9 FAM 40.32 PN2.]

9 FAM 40.32 N11 “VISAS VIPER” Terrorist Reporting Program

9 FAM 40.32 N11.1 Background and Purpose

(TL:VISA-207; 09-19-2000)

a. The VISAS VIPER Program (VVP) originated in response to the 1993 World Trade Center (WTC) bombing and other threats and incidents of terrorism involving foreign nationals. An investigation into the WTC bombing revealed deficiencies in the way available information on terrorists was being shared at abroad posts and reported to the Department. Specifically found lacking was a mechanism for routinely and consistently bringing suspected terrorists to the Consular Section's attention for the purpose of entering their names into the Department's "Consular Lookout and Support System" (CLASS) and the INS and/or U.S. Customs Service's "Interagency Border Inspection System" (IBIS). The VISAS VIPER Program was created to address this concern. Its mission is to:

- (1) Utilize the cooperative resources of all elements of Foreign Service posts to identify potential terrorists;
- (2) Develop information on such individuals;
- (3) Provide a direct consular channel for reporting this information; and,
- (4) Watchlist the subjects in CLASS and IBIS to ensure they are appropriately screened should they later apply for visas or for entry into the United States.

b. In May 1997, the TIPPIX Program was initiated to scan the photographs of suspected terrorists, obtained from Foreign Service posts and other sources, into the TIPOFF/VIPER counterterrorism database and the IBIS lookout system. In April 1998, the Department began sharing names from the database with the Canadian Government under a program called TUSCAN. Each program has significantly enhanced U.S. border security.

9 FAM 40.32 N11.2 Scope of the Program

9 FAM 40.32 N11.2-1 Limited to Non-Visa Applicants

(TL:VISA-207; 09-19-2000)

The VISAS VIPER Program (VVP) is intended solely for reporting on aliens who are not currently applying for U.S. visas. Visa applicants who are suspected of terrorist activity continue to be subject to the VISAS DONKEY or VISAS BEAR security advisory opinion requirement. [See 9 FAM 40.32 N11.3.]

9 FAM 40.32 N11.2-2 Limited to Terrorists

(TL:VISA-182; 12-04-1998)

The VIPER channel is further limited to aliens who are known as potential terrorists. It should not be used to report on narcotraffickers, international criminals, or other malefactors unless they are also suspected of falling within the purview of INA 212(a)(3)(B). **NOTE:** An alien who is not a current visa applicant, but whom a consular officer suspects of involvement in exclusionary criminal or narcotics trafficking activity, may be entered directly into CLASS by the consular post using the appropriate quasi refusal code. [See 9 FAM PART IV Appendix D, Exhibit I.]

9 FAM 40.32 N11.3 Distinction between “VISAS VIPER” and “VISAS DONKEY/BEAR”

(TL:VISA-182; 12-04-1998)

The VISAS VIPER reporting program complements the VISAS DONKEY and VISAS BEAR security advisory opinion (SAO) procedures in that VISAS VIPER telegrams report on possible terrorists who are not current visa applicants for the purpose of watchlisting them, while VISAS DONKEY and VISAS BEAR cables are used to request SAOs on such individuals when they apply for visas. Posts must use whichever procedure is appropriate to bring all terrorists on whom they have information to the Department's attention.

9 FAM 40.32 N11.4 VVP Administration at Foreign Service Posts

9 FAM 40.32 N11.4-1 VISAS VIPER Committees

(TL:VISA-207; 09-19-2000)

The VVP is primarily administered at abroad posts through a VISAS VIPER Committee established at each post, chaired by the DCM or principal officer and composed of representatives from appropriate post entities. All sections and agencies involved in security, law enforcement, and intelligence activities should participate, as should those having official and/or

public contacts that may produce terrorism-related information. The VISAS VIPER Committees meet at least quarterly to share information on known or suspected terrorists and to determine whether such information meets the criteria for VISAS VIPER reporting. [See 9 FAM 40.32 N11.7.] A report summarizing the results of the committee meeting(s) held during each quarter is required in accordance with the instructions in 9 FAM 40.32 N11.6. While VISAS VIPER Committee meetings are the principal forums for sharing terrorist intelligence at post, information developed on an ad hoc basis, particularly that of an urgent nature, must also be considered for expeditious reporting through the VISAS VIPER channel.

9 FAM 40.32 N11.4-2 Post VVP Coordinators

(TL:VISA-182; 12-04-1998)

Posts are encouraged to designate a VISAS VIPER Coordinator, normally the consular section chief or an officer responsible to him or her, who would serve the following functions:

(1) Liaison with other sections and agencies (provide information and advice on VVP policies and procedures, ensure that State Department officers use the VISAS VIPER channel when reporting on terrorists, and promote awareness and utilization of the VIPER channel among other-agency representatives);

(2) Coordinate VIPER committee meetings (assist the DCM/PO in scheduling the mandatory quarterly meetings and arrange appropriate State Department and other-agency participation);

(3) Oversee VISAS VIPER reporting (prepare required quarterly reports on post's VVP activities and monitor ad hoc reporting on individual terrorists); and

(4) Liaison with the Department (maintain contact with the Department's VISAS VIPER Coordinator, seek guidance on questions regarding VVP issues, and respond to the Department's requests for information on VIPER cases).

9 FAM 40.32 N11.5 VVP Administration Within the Department

9 FAM 40.32 N11.5-1 Organization and Functions

(TL:VISA-207; 09-19-2000)

In the Department, the VISAS VIPER Program is an integral part of "TIPOFF", a program administered by the Bureau of Intelligence and Research (INR) that coordinates the Department's use of interagency intelligence for the watchlisting of terrorists. TIPOFF maintains a counterterrorism database now numbering over 43,000 names, of which more than 9,000 were contributed through the VISAS VIPER channel. The

TIPOFF/VIPER staff, in close cooperation with the Visa Office's Coordination Division (CA/VO/L/C), develops VISAS VIPER policies and procedures, creates and updates TIPOFF records, and determines whether the names of individual suspected terrorists are entered into CLASS and IBIS and shared with the Canadian Government. It provides feedback and guidance to Foreign Service posts on VISAS VIPER reporting and serves as liaison with interested offices in the Department and with the headquarters of other government agencies on matters relating to the program. All communications to the TIPOFF/VIPER staff should be directed to INR/TIPOFF.

9 FAM 40.32 N11.5-2 The Department's VVP Coordinator

(TL:VISA-207; 09-19-2000)

The Department's VISAS VIPER Coordinator is located at INR/TIPOFF, Room 6510, Department of State, Washington, D.C. 20520. The coordinator can be reached telephonically at (202) 736-4361 and his or her FAX number is (202) 647-8030.

9 FAM 40.32 N11.6 Quarterly Reporting Requirement

9 FAM 40.32 N11.6-1 Mandate and Contents

(TL:VISA-182; 12-04-1998)

Posts are required to submit quarterly reports outlining their VISAS VIPER Program activities during each period. Such reports should contain the date(s) VVP Committee meetings were held, the number of VIPER telegrams submitted, and a brief discussion of any questions or comments the post may have regarding the program's policies and procedures. Reports must be submitted even if no information on terrorists was developed during the quarter. The quarterly report requirement was instituted upon the recommendation of the Inspector General to improve the participation of Foreign Service posts in the VISAS VIPER Program. The OIG's close attention to the VVP reflects the program's key role in the Department's counterterrorism efforts.

9 FAM 40.32 N11.6-2 Preparation of Quarterly Reports

(TL:VISA-182; 12-04-1998)

VVP quarterly reports are due no later than 15 days following the end of each quarter, i.e., by the 15th of January, April, July, and October. The quarter reported upon should be clearly identified in the subject line: e.g. "VISAS VIPER: FY-98 3RD QUARTER REPORT." The reports should be slugged for INR/TIPOFF and CA/VO/L/C and use the following tags: KVPR, CVIS, CMGT, PINR, PTER, ASEC.

9 FAM 40.32 N11.6-3 Submitting Quarterly Reports for Other Posts

(TL:VISA-182; 12-04-1998)

Posts may submit quarterly reports on behalf of constituent and/or non visa-issuing posts within their host countries. In such cases, the reporting posts should be certain to indicate in their quarterly reports the posts with which they have consulted on VISAS VIPER activities and on whose behalf they are reporting.

9 FAM 40.32 N11.7 VISAS VIPER Reporting Criteria

(TL:VISA-182; 12-04-1998)

a. A VISAS VIPER cable must be submitted if:

(1) There is reason to suspect that an individual falls within the purview of INA 212(a)(3)(B); and,

(2) There is sufficient biographic data to positively identify the subject of the information.

b. The primary goal of the VISAS VIPER Program is to develop high quality, usable records on possible terrorists, not merely to collect impressive statistics. A VISAS VIPER telegram should, therefore, only be sent if both of the above criteria are met.

9 FAM 40.32 N11.7-1 Reason to Suspect Terrorist Activity

(TL:VISA-182; 12-04-1998)

a. The information provided in a VISAS VIPER telegram must be sufficient to sustain a reasonable suspicion that the individual is subject to INA 212(a)(3)(B); i.e., that he or she:

(1) Has engaged, is engaged, or is likely to engage in terrorist activity as defined in that section;

(2) Has incited terrorist activity with intent to cause death or bodily harm; or,

(3) Is a knowing member or a representative of one of the 30 terrorist organizations designated by the Secretary of State. [See 9 FAM 40.32 N6.6(c) for a list of these designated terrorist organizations.]

b. It should be noted that the "reasonable suspicion" criterion for submitting VISAS VIPER cables represents a lesser standard than the "reason to believe" standard required to support visa denial under INA 212(a)(3)(B). The Department considers the "reasonable suspicion" criterion to be met if the derogatory information currently available would war-

rant further detailed inquiry into the subject's background should he or she apply for a visa. An individual's association with known or suspected terrorists or terrorist groups also meets the criterion if such association suggests a proscribed membership or personal involvement in terrorist acts.

9 FAM 40.32 N11.7-2 Identification of Subject

(TL:VISA-207; 09-19-2000)

a. It is essential to develop and report all available identifying data on the subjects of VISAS VIPER telegrams. Derogatory information on a suspected terrorist, regardless of its gravity, is of little value unless it can be linked to that individual should he or she apply for a visa or for entry into the United States. Insufficient biographic data in a given case can result in a failure to identify a serious threat to U.S. security. It can also produce "false hits" which complicate visa adjudication, place consular officers at risk of sanctions under the visa lookout accountability requirements, and cause unwarranted inconvenience to bona fide visa applicants. For these reasons, the Department carefully weighs the adequacy of biographic information when determining whether to create TIPOFF records and CLASS and/or IBIS entries on the subjects of VISAS VIPER reporting. It should be noted, however, that even when CLASS and IBIS entries are not made because of insufficient biographic data, TIPOFF records are often created on the subject in case additional information is later developed.

b. VISAS VIPER telegrams should ideally provide full names (including aliases and alternate spellings) and dates and places of birth. Since naming conventions vary by country and region, the subject's surname(s) must be clearly identified, either by listing it and/or them first, followed by a comma and the given name(s), or by placing the surname(s) in parentheses. In cases where the subject's given name can be either masculine or feminine, the subject's gender should be specified.

c. If an individual's exact date and place of birth are not available, a reasonable estimate of his or her age and the known or probable country of birth should be provided if possible. VISAS VIPER telegrams may be submitted without birth data if the subject's name is not a common one, and if the post is able to provide other identifying information. Personal details such as passport data, physical characteristics, education, profession, residential and employment history, and the names of family members are often useful in establishing identity. A subject's affiliation with a terrorist group, and his or her position therein, should always be reported as this information is particularly valuable for both identification and threat assessment purposes.

d. Please note that a year of birth, at a minimum, is required to enter a subject's name into the INS and/or U.S. Customs Service's IBIS lookout system. It is especially important to keep this in mind when reporting on nationals of visa waiver countries since the only screening of such individuals is through IBIS at U.S. ports-of-entry.

9 FAM 40.32 N11.8 Prioritizing and Evaluating Terrorist Information

9 FAM 40.32 N11.8-1 Priorities for Terrorist Reporting

(TL:VISA-182; 12-04-1998)

While all suspected terrorists meeting the VISAS VIPER criteria must be reported, posts should keep in mind the following priorities when gathering and evaluating terrorist information. These priorities, ranked in descending order of threat, were developed in consultation with other U.S. Government agencies:

- (1) Individuals who pose or may pose a present threat to U.S. interests in the United States or abroad;
- (2) Individuals who are not now known to pose a present threat to U.S. interests, but who have done so within the past 15 years; and,
- (3) Individuals who pose a present threat to non-U.S. interests, or who did so within the past ten years.

9 FAM 40.32 N11.8-2 Evaluation of Terrorist Information

(TL:VISA-182; 12-04-1998)

a. The following factors are among many that must be considered when evaluating terrorist information and/or assessing its urgency:

- (1) The immediacy and severity of the threat posed;
- (2) The reliability of the information;
- (3) Whether the subject is clearly identified; or
- (4) Whether additional information could be developed within a reasonable time period to further clarify the situation or better identify the subject.

b. Evaluating terrorist information for the purpose of submitting VISAS VIPER reporting requires flexibility and subjective judgment for which there are not always clear guidelines. The Department believes that such assessments are best made by each post's VISAS VIPER Committee, which has first-hand knowledge of the host country's terrorist threat situation. If the post believes the reporting criteria outlined in 9 FAM 40.32 N7 have been met, a VISAS VIPER telegram providing all known information should be submitted. The Department assumes responsibility for action taken once information on potential terrorists is reported.

9 FAM 40.32 N11.9 VISAS VIPER Reporting Channel

(TL:VISA-182; 12-04-1998)

Counterterrorism reporting is an important foreign policy function requiring the collaborative effort of all members of a post's country team. Except in the rare instances where there are special operational concerns, all State Department reporting on terrorists, including Diplomatic Security (DS) reporting, must be transmitted through the VISAS VIPER channel. Other agency terrorist reporting may use the VIPER channel or be sent through the agency's traditional reporting channel. Regardless of the means of transmission chosen, it is essential to ensure that suspected terrorists are screened for possible inclusion in the CLASS and IBIS lookout systems.

9 FAM 40.32 N11.9-1 Departmental Reporting

(TL:VISA-182; 12-04-1998)

The VISAS VIPER channel offers a direct consular conduit for watchlisting known and suspected terrorists and must be used for all Departmental reporting on individuals who meet the VIPER Program's scope and criteria. Information on terrorists may originate from a variety of sources including consular interviews, media reporting, and the security officer contacts and other post sections and agencies. The Foreign Broadcast Information Service (FBIS), if available at post, is a valuable resource. Terrorist information may be developed and shared through either the post's interagency VISAS VIPER Committee or on an ad hoc basis. While the Consular Section has responsibility for coordinating and monitoring VISAS VIPER reporting, other Department sections are responsible for sharing terrorist information with the Consular Section, and, if drafting reports on terrorists, for ensuring that such reporting is transmitted through the VISAS VIPER channel. [For procedural guidance on preparing VISAS VIPER telegrams, see 9 FAM 40.32 PN3.]

9 FAM 40.32 N11.9-2 Other Agency Reporting

(TL:VISA-182; 12-04-1998)

The VISAS VIPER channel is intended to supplement, rather than supplant, previously existing channels used by other agencies for reporting on foreign terrorists. Other agencies may share terrorist information with the post's VISAS VIPER Committee for transmission to the Department through the VIPER channel, or may choose to send it directly to their headquarters. Data transmitted through the latter route is usually later passed to the Department for possible CLASS and IBIS entry through the TIPOFF Program. Other agency drafters can expedite TIPOFF's receipt of their terrorist reporting by including the phrase "Recommended for consideration in the VISAS VIPER Program" in the text of the outgoing messages. Originating agencies may prefer to use their own reporting channels for a variety of

reasons, including the protection of sources and ongoing operations. However, all post agencies should be aware of the availability of the VISAS VIPER channel as a direct and more expeditious means of watchlisting suspected terrorists in the border security lookout systems (CLASS and IBIS) and should be encouraged to use it in emergent circumstances.

9 FAM 40.32 N11.10 Watchlisting Terrorists

(TL:VISA-207; 09-19-2000)

The subjects of VISAS VIPER reporting who meet the program criteria are entered into TIPOFF's counterterrorism database and their names are included in CLASS under the DPT-00 code. As with all DPT-00 entries, the Department's security advisory opinion is required should a subject later apply for a visa, and no visa may be issued until the Department's response to the SAO request is received. The names of most individuals whose dates of birth are known are also entered into the INS/U.S. Customs Service's IBIS lookout system and are shared with the Canadian Government through the TUSCAN Program. As indicated in 9 FAM 40.32 N11.7-2(d), at least the subject's year of birth is needed to create an IBIS entry, making the provision of this information particularly important when submitting a VISAS VIPER cable on nationals of visa waiver countries.

9 FAM 40.32 N11.10-1 CLASS Entry by Posts in Certain Cases

(TL:VISA-702; 09-19-2000)

When a consular officer at a post on-line with CLASS believes that a suspected terrorist should be included in CLASS immediately, the consular officer should enter the subject's name directly using the appropriate quasi INA 212(a)(3)(B) refusal code. [See 9 FAM PART IV Appendix D, Exhibit I.] Circumstances requiring such action include, but are not limited to, a credible imminent threat to U.S. interests or an impending application for a U.S. visa by the subject. The consular officer must then expeditiously submit a VISAS VIPER telegram, in which the post's CLASS entry should be reported.

9 FAM 40.32 N11.10-2 Conducting CLASS Checks

(TL:VISA-182; 12-04-1998)

Prior to submitting a VISAS VIPER telegram on a potential terrorist, consular posts must conduct a CLASS check to determine whether the subject was previously included as a DPT-00 entry or under another code requiring a security advisory opinion. The VISAS VIPER telegram should be submitted even if the CLASS check reveals a previous entry since the information available to post is likely to add to the subject's existing record. The results of the CLASS check should be reported in the VIPER cable. Any CLASS entries must be fully cited so that the subject may be accurately identified and his/her record expeditiously located.

9 FAM 40.32 N11.10-3 Removing VVP CLASS and IBIS Entries

(TL:VISA-182; 12-04-1998)

Recommendations to delete CLASS and IBIS entries which were based upon VISAS VIPER reporting should be submitted to the Department slugged for INR/TIPOFF and CA/VO/L/C. The cable should contain the "VISAS VIPER" code indicator and the "KVPR" tag. Justification for the deletion request must be provided. Circumstances creating the need for such a recommendation might include the subject's demise or the development of evidence that the derogatory information against the subject, previously believed credible, is without foundation.

9 FAM 40.32 N11.11 Department Feedback

(TL:VISA-177; 04-30-1998)

The Department will reply in a timely manner to all VISAS VIPER communications with the exception of routine quarterly reports. In individual cases, the Department will inform posts regarding the watchlisting of the subject(s) and will advise if additional information is needed. Posts' inquiries regarding VISAS VIPER policies and procedures will also receive the Department's prompt attention. The Department will make every effort to provide comprehensive guidance and feedback on VISAS VIPER matters and to form a true partnership with Foreign Service posts in fulfilling this crucial counterterrorism responsibility.